

**OPINION
73-494**

January 29, 1973 (OPINION)

Major General La Clair A. Melhouse
Office of the Adjutant General
P. O. Box 1817
Bismarck, ND 58501

Dear Major General Melhouse:

This is in response to your letter in which you state the following:

"Paragraph 1, section 37-25-02 North Dakota Century Code reads as follows:

1. 'Period of service' means the period of time beginning August 5, 1964 and ending on a date prescribed by the President or the Congress for the cessation of hostilities in Vietnam.

"The question: If the cease fire agreement as announced by President Nixon at 9 P.M. C.S.T., Tuesday, January 23, 1973 is signed by all parties concerned on January 27, 1973, can January 27, 1973 be interpreted as the official date of cessation of hostilities and therefore the basis for the legislature to terminate any payments to military personnel for service performed after that date."

The term "cease fire" has variable meanings depending upon the context in which it is used. While it may be primarily a military term and has been used in the military to express very definite thoughts of even commands, either on the range or on the battle field, it has been adopted and is frequently used by the civilians to express a comparable thought; namely, "stop whatever you're doing". The term "cease fire" as expressed by the President over the new media to take effect on a certain date embraces a more comprehensive meaning. It has reference to a formal cease fire agreement reached by the signatories and in this context with reference to the hostilities in Vietnam, it means to terminate the shooting war there. In its broad comprehensive sense, as used in this context, it means the termination of open and hostile warfare. The term "cessation of hostilities" is not a synonym for peace, but rather, a termination of the actual shooting or the termination of open and hostile warfare. While it is not peace in itself, it is the first step toward bring about peace.

We would thus conclude that the term "cessation of hostilities" and "cease fire" as used in the present context, have similar meanings. The perplexity encountered in determining the exact meaning of the term as used in the statute can be appreciated if it is remembered that the hostilities were not begun with a formal declaration by either Congress or by the President. In the absence of such formality, it could suggest that hostilities could be terminated without a formal declaration. However, be that as it may, here we

have a formal written instrument agreed to by the parties and powers involved in the Vietnam Conflict and signed by same.

The term "cessation of hostilities" has been judicially defined in a number of instances by both state courts and federal courts in instances where private rights were involved. The majority of jurisdictions concluded that the cessation of hostilities did not refer to a formal presidential proclamation, but actually referred to the stopping of combat or active shooting. The term has also been construed to mean a suspension of hostilities or shooting. See *Samuels v. United Seamen's Service*, 165 F. 2d. 409, *Girdler Corporation v. Charles Johnson and Company*, 95 S. Supp. 713, *Stinson v. New York Life*, 167 F. 2d. 233, and *Darnall v. Day*, 37 N.W.2d. 277.

In reviewing the above cited cases and other cases cited therein, we have no difficulty in construing the term "cessation of hostilities" to mean the time when the shooting stops as distinguished from a formal declaration or proclamation. However, the term in quotation is modified by the following language: "prescribed by the president or the congress". This implies unmistakably that action by the president or the congress is to be the determining criteria. We are satisfied that the Legislature had in mind something more than a temporary truce, cease fire, or cessation of hostilities, and deliberately excluded those issued by the field commanders.

Relying upon news media, we are informed that a written agreement, which has been initialed, will be signed by the parties to the agreement. The President has announced that the Secretary of State will sign the agreement on behalf of the United States on January 27, and that the provisions of the agreement will become effective at 6 p.m. January 27, C.S.T. The Secretary of State is acting on behalf of the President of the United States, and, as such, the execution of the agreement is, by direction and as "prescribed by the President". It is a formal cessation of hostilities as distinguished from a temporary cessation of hostilities.

It is therefore our opinion that January 27 is the date on which the cessation of hostilities as prescribed by the President will have occurred. However, because the agreement or cessation does not go into effect until 6 p.m. C.S.T. on January 27, such date should be inclusive and the cutoff period should begin on January 28, 1973.

It is our further opinion that if the Forty-third Legislature were to specifically set that date as the cessation of hostilities by amending section 37-25-02(1) any question or doubt would be resolved because the courts will give appreciable weight to a legislative determination.

I trust this answers your inquiry.

Sincerely yours,

Allen I. Olson

Attorney General